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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

NATURAL SELECTION FOODS, LLC

A limited liability company

Plaintiff,

v.

**PREMIUM FRESH FARMS, LLC, a California
limited liability company; SALVADOR
PAULTARANTINO, an individual; EMMITT L.
PFOST, an individual; PAUL E. DUNHAM, an
individual; PDP ASSOCIATES, LLC, a
California limited liability company; and AG
HARVESTING & TECHNOLOGIES, LLC, a
California limited liability company**

Defendants.

**FRESH KIST PRODUCE, LLC, a California
limited liability company; FRESH START
ADVANTAGE, INC., a California corporation**

Plaintiffs in Intervention,

v.

**PREMIUM FRESH FARMS, LLC, a California
limited liability company; SALVADOR
PAULTARANTINO, an individual; EMMITT L.
PFOST, an individual; PAUL E. DUNHAM, an
individual; PDP ASSOCIATES, LLC, a
California limited liability company; and AG
HARVESTING & TECHNOLOGIES, LLC, a
California limited liability company**

Defendants in Intervention

Case No. f:07-cv-00197-RMW

**STIPULATION AND ORDER FOR
SETTLEMENT AND ENTRY OF
JUDGMENT**

1 Defendant Premium Fresh Farms, LLC, submits the following Stipulation and Order for
 2 Settlement and Entry of Judgment under the Perishable Agricultural Commodities Act of 1930, as
 3 amended 7 U.S.C. § 499e(c) ("PACA"):

4 1. This Stipulation and Order may be executed in any number of counterparts with the
 5 same effect as if all signatories had signed the same document. All counterparts must be construed
 6 together to constitute one instrument.

7 2. The parties stipulate to the following Order for Settlement and Judgment for
 8 purpose of facilitating the recovery of PACA Trust Assets and to resolve the instant action.

9 3. Plaintiff and Plaintiffs in Intervention sold to Premium Fresh Farms, LLC in
 10 interstate commerce and Premium Fresh Farms, LLC purchased from Plaintiff and Plaintiffs in
 11 Intervention perishable agricultural commodities ("Produce").

12 4. Premium Fresh Farms, LLC acknowledges that the products sold and shipped to
 13 Plaintiff and Plaintiffs in Intervention were Produce. Premium Fresh Farms, LLC further
 14 acknowledges that Plaintiff and Plaintiffs in Intervention have taken all steps necessary to preserve
 15 all statutory trust rights to which they are entitled under PACA.

16 5. Premium Fresh Farms, LLC acknowledges that Plaintiff and Plaintiffs in
 17 Intervention are valid trust creditors under Section 5(c) of the PACA.

18 6. The parties have entered into a Confidential Settlement Agreement and Mutual
 19 Release ("Settlement"), wherein Premium Fresh Farms, LLC has agreed to make payment to
 20 Plaintiff and Plaintiffs in Intervention in satisfaction of their claims. Pursuant to the Settlement, the
 21 parties have agreed as follows:

- 22 a. Natural Selection Foods, LLC is a PACA trust beneficiary of Premium Fresh
 23 Farms, LLC, in the amount of \$182,075.64.
 24 b. Judgment shall be entered in favor of Natural Selection Foods, LLC, in the
 25 total amount of \$182,075.64, which consists of the principal of \$176,186.75,
 26 plus \$13,000.00 in attorney's fees and \$12,888.89 in prejudgment interest,
 27 less an agreed discount of \$20,000.00.
 28

- 1 c. Fresh Kist Produce, LLC is a PACA trust beneficiary of Premium Fresh
- 2 Farms, LLC, in the amount of \$1,377,858.71.
- 3 d. Judgment shall be entered in favor of Fresh Kist Produce, LLC, in the total
- 4 amount of \$1,377,858.71, which consists of the principal of \$1,333,525.04,
- 5 plus \$7,000.00 in attorney's fees and \$37,907.67 in prejudgment interest.
- 6 e. Fresh Start Advantage, Inc. is a PACA trust beneficiary of Premium Fresh
- 7 Farms, LLC in the amount of \$459,967.97.
- 8 f. Judgment shall be entered in favor of Fresh Start Advantage, Inc., in the
- 9 total amount of \$459,967.97, which consists of principal of \$429,919.00,
- 10 plus \$3,000.00 in attorney's fees and \$27,974.97 in prejudgment interest.
- 11 g. Defendants Premium Fresh Farms, LLC, Salvadore Paul Tarantino, Emmitt
- 12 L. Pfof, PDP Associates, LLC And Ag Harvesting & Technologies, LLC
- 13 shall be jointly and severally liable for all amounts due under this
- 14 judgment.
- 15 h. Post-judgment interest on unpaid principal sums shall accrue at the rate of
- 16 18% per annum from January 20, 2007 forward until fully paid.
- 17 7. The form of Judgment is attached hereto and incorporated as Exhibit "A".
- 18 8. Plaintiff and Plaintiffs in Intervention agree and stipulate not to take proceedings to
- 19 enforce this Judgment provided that Premium Fresh Farms, LLC pays to Plaintiff and Plaintiffs in
- 20 Intervention the full amount due in a timely manner as set forth in the Settlement.
- 21 11. Plaintiff and Plaintiffs in Intervention hereby stipulate and agree that upon payment
- 22 in full under the terms of the Settlement, Plaintiff and Plaintiffs in Intervention shall file a Notice of
- 23 Satisfaction of Judgment with the Court.
- 24 13. By signing this Stipulation and Order below on behalf of Plaintiff, Plaintiffs in
- 25 Intervention and Premium Fresh Farms, the undersigned represent and warrant that they have all
- 26 requisite authority to bind the respective party to the terms of this Stipulation and Order.
- 27
- 28

- 1 A. Each of the above paragraphs 1 through 13 is hereby incorporated as though
2 fully set forth.
3 B. Plaintiff and Plaintiffs in Intervention are valid trust creditors under Section
4 5(c) of the PACA, 7 U.S.C. § 499e(c) against Premium Fresh Farms, LLC.
5 C. Judgment shall be entered in favor of Plaintiff and Plaintiffs in Intervention and
6 against Premium Fresh Farms, LLC as provided for in the Judgment attached
7 as Exhibit "A".
8 D. Upon payment in full under the Settlement, Plaintiff and Plaintiffs in
9 Intervention shall file a Notice of Satisfaction of Judgment with the Court.
10

11 IT IS SO ORDERED.

12
13 Dated: 2/7, 2007

Ronald M. Whyte
JUDGE, U.S. DISTRICT COURT

14
15 Stipulated by the parties:

16 Dated: February 6, 2007

Dated: 06 February 2007

17
18 Paul W. Moncrief
19 Paul W. Moncrief, Esq.
20 Johnson & Moncrief, PLC
21 Attorney for Premium Fresh Farms, LLC

Katy Koestner Esquivel
Katy Koestner Esquivel, Esq.
Meuers Law Firm, PL
Attorney for Plaintiff

22 Dated:

23 R. Jason Read
24 R. Jason Read, Esq.
25 Rynn & Janowsky
26 Attorney for Plaintiffs in Intervention
27
28